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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,817	11/25/2003	Steven E. Sadinsky	50883/TJD/G316	8001
23363	7590	05/18/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068				FERGUSON, MICHAEL P
		ART UNIT		PAPER NUMBER
		3679		

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/723,817	SADINSKY, STEVEN E.
	Examiner Michael P. Ferguson	Art Unit 3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 February 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20,24 and 25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Objections***

1. Claim 14 is objected to because of the following informalities:

Claim 14 (line 5) recites “of each pole interconnected by”. It should recite --of each pole, interconnected by--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 18, 20 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasso (US 2,384,338).

As to claim 18, Rasso discloses a pole **6** capable of use with a gate comprising:  
a lower end;

an insert **12** that is received within the lower end of the fence pole; and  
a pin **11** that is fixedly (welded; column 2 lines 1-10) attached to the insert, the pin having a diameter smaller than that on the pole and a portion that protrudes from the lower end of the fence pole;

wherein the pin is capable of being inserted into a drilled socket in a pool deck (Figure 1).

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As to claim 20, Rasso discloses a fence pole **6** capable of use with a gate wherein the pin **11** is made of metal (Figure 1).

As to claim 25, Rasso discloses a pole **6** capable of use with a gate wherein the pin **11** is fixedly attached to the insert **12** by an adhesive (welded; column 2 lines 1-10).

4. Claims 18,19 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Fearna (US 4,576,364).

As to claim 18, O'Fearna discloses a pole **12** capable of use with a gate comprising:

a lower end;  
an insert **18** that is received within the lower end of the fence pole; and  
a pin **16** that is fixed attached (column 2 lines 24-29) to the insert, the pin having a diameter smaller than that on the pole and a portion that protrudes from the lower end of the fence pole;

wherein the pin is capable of being inserted into a drilled socket in a pool deck (Figure 2).

As to claim 19, O'Fearna discloses a pole **12** capable of use with a gate wherein the insert **18** is made of plastic (Figure 2).

As to claim 25, O'Fearna discloses a pole **12** capable of use with a gate wherein the pin **16** is fixedly attached to the insert **18** by an adhesive (column 2 lines 24-29).

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Fearna.

As to claim 20, O'Fearna fails to disclose a pole capable of use with a gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a pole as disclosed by O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

7. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadinsky et al. (US 5,664,769) in view of O'Fearna.

As to claims 1 and 24, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11**; a mesh screen **1F** tensioned between the poles having top and bottom bindings; a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33**, a first horizontal brace **12** for spacing the upright support members and a length of mesh screen tensioned between the upright support members;

support means **21,22** capable of withstanding lateral tension forces of the screen for supporting and latching the gate;

hinges **H** secured to the support means on one side of the gate; and  
a latch device **M** secured to the gate and to the support means on the opposite  
side of the gate;

wherein the poles are adapted to be inserted into the pool deck adjacent to the  
pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive  
one pole (capable of receiving a pin; Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a lightweight fence and gate wherein the poles  
include an insert that is contained within each pole and a pin that is fixedly attached to  
each insert, the pin protruding from the bottom of each pole; wherein the pin is fixedly  
attached to the insert by an adhesive.

O'Fearna teaches a lightweight fence comprising a plurality of poles **12**, the  
poles including an insert **18** that is contained within each pole and a pin **16** that is fixedly  
attached to each insert, the pin protruding from the bottom of each pole; wherein the  
pins are capable of being inserted into a pool deck adjacent to a pool; wherein the pin is  
fixedly attached to the insert by an adhesive (column 2 lines 24-29); the insert and pin  
providing for easy insertion of the poles into the ground, while providing for safe and  
easy carrying and storage of the poles, the insert and pin being pushed inside the pole  
during storage (Figure 2, column 1 lines 40-43, column 3 lines 33-36). Accordingly, it  
would have been obvious to one having ordinary skill in the art at the time the invention  
was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. to

have an insert and pin as taught by O'Fearna in order to provide for easy insertion of the poles, while providing for safe and easy carrying and storage of the poles.

As to claim 2, O'Fearna teaches a lightweight fence wherein an insert 18 is made of plastic (Figure 5, column 2 lines 50-55).

As to claim 3, Sadinsky et al. in view of O'Fearna fails to disclose a lightweight fence and gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 4, Sadinsky et al. disclose a lightweight fence and gate wherein the support means 21,22 includes on each side of the gate G a pair of poles 21,22 inserted into the pool deck with cross members 24,25 attached to both of the pair of poles (Figure 3).

As to claim 5, Sadinsky et al. disclose a lightweight fence and gate wherein the gate G includes a generally U-shaped frame opening upwardly with the first horizontal brace 13 secured to the lower ends of the upright support members 31,33 and a second horizontal brace CB secured to the upright support members on the pool side of the mesh screen IF at a height well below the top of the gate fabric (Figure 3).

As to claim 6, O'Fearna teaches a fence and gate wherein an insert **18** is polyvinylchloride (Figure 5, column 2 lines 50-55).

As to claim 7, Sadinsky et al. in view of O'Fearna fails to disclose a lightweight fence and gate wherein the pin is made of stainless steel.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of stainless steel as such practice is a design consideration within the skill of the art.

As to claim 8, Sadinsky et al. disclose a fence and gate wherein the support means **21,22** includes on each side of the gate **G** a pair of poles **21,22**, wherein the poles are inserted into the pool deck and wherein cross members **24,25** are attached to both poles (Figure 3). O'Fearna teaches a fence wherein a pair of poles **12** have a plastic insert **18** contained within each pole and a pin **16** that is attached to each insert, the pin protruding from the bottom of each pole, wherein the pins are inserted into the ground (Figure 2).

Sadinsky et al. in view of O'Fearna fails to disclose a lightweight fence and gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re

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Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 9, O'Fearna teaches a fence wherein a pin **16** is attached to a plastic insert **18** by an adhesive (Figure 2, column 2 lines 24-29).

As to claim 10, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11**; a first length of mesh screen **IF** tensioned between the poles defining the pool fence;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33** and a second length of mesh screen tensioned between the upright support members of the gate; and

support means **21,22** to which the first length of mesh screen is attached for supporting the fence and gate and latching the gate including a truss structure capable of isolating the lateral tension forces of the first length of mesh screen on opposite sides of the gate;

wherein the poles are adapted to be inserted into the deck adjacent to the pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive a pole (capable of receiving a pin; Figures 2, 3 and 5).

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Sadinsky et al. fail to disclose a lightweight fence and gate wherein the poles, include an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole.

O'Fearna teaches a lightweight fence comprising a plurality of poles **12** adapted to be inserted into the ground, the poles including an insert **18** that is contained within each pole and a pin **16** that is attached to each insert, the pin protruding from the bottom of each pole; wherein the pins are capable of being inserted into a deck adjacent to a pool; the insert and pin providing for easy insertion of the poles into the ground, while providing for safe and easy carrying and storage of the poles, the insert and pin being pushed inside the pole during storage (Figure 2, column 1 lines 40-43, column 3 lines 33-36). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. to have an insert and pin as taught by O'Fearna in order to provide for easy insertion of the poles, while providing for safe and easy carrying and storage of the poles.

As to claim 11, O'Fearna teaches a fence wherein inserts **18** of poles **12** are made of plastic (Figure 5, column 2 lines 50-55).

As to claim 12, Sadinsky et al. in view of O'Fearna fails to disclose a lightweight fence and gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 13, O'Fearna discloses a fence and gate wherein pins **16** are attached to inserts **18** by an adhesive (Figure 2, column 2 lines 24-29).

As to claim 14. Sadinsky et al. disclose a method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles **11** interconnected by flexible mesh fencing **IF** comprising:

inserting the plurality of poles into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in tension, the deck having drilled sockets adapted to receive the poles (capable of receiving a pin);

the first and last poles of the series of poles defining a gate opening;

the first and last poles each constituting a pair of poles interconnected to each other to define a support structure **21,22** capable of absorbing the tension of the flexible mesh fencing;

fabricating a gate **G** including a pair of side rails **31,33**, a cross rail **12** and flexible mesh tensioned between the side rails;

hinging the first of the pair of side rails of the gate to the first of the pair of poles; and

installing a latch **M** between the second of the pair of side rails of the gate and the last pole of the tensioned fence;

whereby the gate is free to open and close without interference by the tension of the mesh of the fencing (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a method wherein the poles including an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole.

O'Fearna teaches a method for installing a fence comprising a plurality of poles **12** interconnected by flexible mesh fencing **10**, the poles including an insert **18** that is contained within each pole and a pin **16** that is attached to each insert, the pin protruding from the bottom of each pole; the insert and pin providing for easy insertion of the poles into the ground, while providing for safe and easy carrying and storage of the poles, the insert and pin being pushed inside the pole during storage (Figure 2, column 1 lines 40-43, column 3 lines 33-36). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a method as disclosed by Sadinsky et al. to comprise an insert and pin as taught by O'Fearna in order to provide for easy insertion of the poles, while providing for safe and easy carrying and storage of the poles.

As to claim 15, O'Fearna teaches a method wherein an insert **18** is made of plastic (Figure 5, column 2 lines 50-55).

As to claim 16, Sadinsky et al. in view of O'Fearna fails to disclose a method wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re

Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a method as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 17, O'Fearna teaches a method wherein a pin **16** is attached to an insert **18** with an adhesive (column 2 lines 24-29).

***Response to Arguments***

8. Applicant's arguments filed February 7, 2005 have been fully considered but they are not persuasive.

As to claim 18, Attorney argues that:

Rasso does not disclose a gate pole *wherein the pin is adapted to be inserted into a drilled socket in a pool deck.*

Examiner disagrees. As to claim 18, Rasso discloses a pole **6** capable of use with a gate wherein the pin is capable of being inserted into a drilled socket in a pool deck (Figure 1).

As to claim 18, Attorney argues that:

O'Fearna does not disclose a gate pole *wherein the pin is adapted to be inserted into a drilled socket in a pool deck.*

Examiner disagrees. As to claim 18, O'Fearna discloses a pole **12** capable of use with a gate wherein the pin is capable of being inserted into a drilled socket in a pool deck (Figure 2).

As to claims 1, 10 and 14, Attorney argues that:

Sadinsky et al. in view of O'Fearna does not disclose a lightweight fence and gate *wherein the pins are adapted to be inserted into a deck adjacent to a pool; and wherein the pool deck has a plurality of sockets each socket adapted to receive a pin.*

Examiner disagrees. As to claims 1, 10 and 14, Sadinsky et al. discloses a fence and gate wherein the pool deck has a plurality of sockets, each socket adapted to receive a pole 11 (capable of receiving a pin; Figure 5). O'Fearna teaches a fence wherein pins 16 are capable of being inserted into a deck adjacent to a pool (Figure 2).

#### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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